

AMENDED IN SENATE JANUARY 6, 1998

AMENDED IN SENATE SEPTEMBER 10, 1997

SENATE BILL

No. 334

Introduced by Senator Lewis

February 12, 1997

An act to amend ~~Section 1192.7 of the Penal Code, relating to criminal~~ Sections 667, 1170.12, and 1192.7 of the Penal Code, and repeal Section 2 of Proposition 184 as approved at the November 8, 1994, general election, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 334, as amended, Lewis. Criminal procedure: plea bargaining: ~~serious felonies~~ and sentencing.

(1) Existing law, known as the "three strikes law" and codified in 2 initiative statutes, prescribes alternative prison sentencing for any person convicted of a felony who has one or more prior serious or violent felony convictions, as "serious felony" or "violent felony" was defined on June 30, 1993. On June 30, 1993, a felony conviction for knowingly causing or participating in a vehicular collision, or any other vehicular accident for the purpose of presenting any false or fraudulent claim, was not classified as a serious or violent felony. The initiative statutes provide that any amendment of the provisions requires a $\frac{2}{3}$ vote of the membership of each house of the Legislature.

This bill would make a felony conviction for knowingly causing or participating in a vehicular collision, or any other

vehicular accident for the purpose of presenting any false or fraudulent claim, a serious felony conviction for purposes of sentencing under the “three strikes” provisions of the initiative statutes. Because the bill would constitute an amendment of an initiative statute, the bill would require a $\frac{2}{3}$ vote. By expanding the scope of a sentencing enhancement, this bill would impose a state-mandated local program.

(2) Existing law, amended by initiative statute, generally prohibits plea bargaining if a serious felony is charged. Under existing law, a serious felony includes, among other offenses, burglary of an inhabited dwelling house, grand theft involving a firearm, and carjacking. The initiative statute provides that any amendment of its provisions by the Legislature shall require a $\frac{2}{3}$ vote of the membership of each house.

This bill would add knowingly causing or participating in a vehicular collision, or any other vehicular accident for the purpose of presenting any false or fraudulent claim, to the definition of serious felony for purposes of this prohibition on plea bargaining. Because it would amend an initiative statute, the bill would require a $\frac{2}{3}$ vote. By making this crime subject to the prohibition on plea bargaining, the bill would increase the costs of prosecuting this crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 667 of the Penal Code is*
2 *amended to read:*

3 667. (a) (1) In compliance with subdivision (b) of
4 Section 1385, any person convicted of a serious felony who
5 previously has been convicted of a serious felony in this
6 state or of any offense committed in another jurisdiction

1 which includes all of the elements of any serious felony,
2 shall receive, in addition to the sentence imposed by the
3 court for the present offense, a five-year enhancement for
4 each such prior conviction on charges brought and tried
5 separately. The terms of the present offense and each
6 enhancement shall run consecutively.

7 (2) This subdivision shall not be applied when the
8 punishment imposed under other provisions of law would
9 result in a longer term of imprisonment. There is no
10 requirement of prior incarceration or commitment for
11 this subdivision to apply.

12 (3) The Legislature may increase the length of the
13 enhancement of sentence provided in this subdivision by
14 a statute passed by majority vote of each house thereof.

15 (4) As used in this subdivision, “serious felony” means
16 a serious felony listed in subdivision (c) of Section 1192.7.

17 (5) This subdivision shall not apply to a person
18 convicted of selling, furnishing, administering, or giving,
19 or offering to sell, furnish, administer, or give to a minor
20 any methamphetamine-related drug or any precursors of
21 methamphetamine unless the prior conviction was for a
22 serious felony described in subparagraph (24) of
23 subdivision (c) of Section 1192.7.

24 (b) It is the intent of the Legislature in enacting
25 subdivisions (b) to (i), inclusive, to ensure longer prison
26 sentences and greater punishment for those who commit
27 a felony and have been previously convicted of serious
28 and/or violent felony offenses.

29 (c) Notwithstanding any other law, if a defendant has
30 been convicted of a felony and it has been pled and
31 proved that the defendant has one or more prior felony
32 convictions as defined in subdivision (d), the court shall
33 adhere to each of the following:

34 (1) There shall not be an aggregate term limitation for
35 purposes of consecutive sentencing for any subsequent
36 felony conviction.

37 (2) Probation for the current offense shall not be
38 granted, nor shall execution or imposition of the sentence
39 be suspended for any prior offense.

(3) The length of time between the prior felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a felony shall be defined as:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed

1 unless the sentence automatically, upon the initial
2 sentencing, converts the felony to a misdemeanor. None
3 of the following dispositions shall affect the
4 determination that a prior conviction is a prior felony for
5 purposes of subdivisions (b) to (i), inclusive:

6 (A) The suspension of imposition of judgment or
7 sentence.

8 (B) The stay of execution of sentence.

9 (C) The commitment to the State Department of
10 Health Services as a mentally disordered sex offender
11 following a conviction of a felony.

12 (D) The commitment to the California Rehabilitation
13 Center or any other facility whose function is
14 rehabilitative diversion from the state prison.

15 (2) A conviction in another jurisdiction for an offense
16 that, if committed in California, is punishable by
17 imprisonment in the state prison. A prior conviction of a
18 particular felony shall include a conviction in another
19 jurisdiction for an offense that includes all of the elements
20 of the particular felony as defined in subdivision (c) of
21 Section 667.5 or subdivision (c) of Section 1192.7.

22 (3) A prior juvenile adjudication shall constitute a
23 prior felony conviction for purposes of sentence
24 enhancement if:

25 (A) The juvenile was 16 years of age or older at the
26 time he or she committed the prior offense.

27 (B) The prior offense is listed in subdivision (b) of
28 Section 707 of the Welfare and Institutions Code or
29 described in paragraph (1) or (2) as a felony.

30 (C) The juvenile was found to be a fit and proper
31 subject to be dealt with under the juvenile court law.

32 (D) The juvenile was adjudged a ward of the juvenile
33 court within the meaning of Section 602 of the Welfare
34 and Institutions Code because the person committed an
35 offense listed in subdivision (b) of Section 707 of the
36 Welfare and Institutions Code.

37 (e) For purposes of subdivisions (b) to (i), inclusive,
38 and in addition to any other enhancement or punishment
39 provisions which may apply, the following shall apply
40 where a defendant has a prior felony conviction:

1 (1) If a defendant has one prior felony conviction that
2 has been pled and proved, the determinate term or
3 minimum term for an indeterminate term shall be twice
4 the term otherwise provided as punishment for the
5 current felony conviction.

6 (2) (A) If a defendant has two or more prior felony
7 convictions as defined in subdivision (d) that have been
8 pled and proved, the term for the current felony
9 conviction shall be an indeterminate term of life
10 imprisonment with a minimum term of the
11 indeterminate sentence calculated as the greater of:

12 (i) Three times the term otherwise provided as
13 punishment for each current felony conviction
14 subsequent to the two or more prior felony convictions.

15 (ii) Imprisonment in the state prison for 25 years.

16 (iii) The term determined by the court pursuant to
17 Section 1170 for the underlying conviction, including any
18 enhancement applicable under Chapter 4.5
19 (commencing with Section 1170) of Title 7 of Part 2, or
20 any period prescribed by Section 190 or 3046.

21 (B) The indeterminate term described in
22 subparagraph (A) shall be served consecutive to any
23 other term of imprisonment for which a consecutive term
24 may be imposed by law. Any other term imposed
25 subsequent to any indeterminate term described in
26 subparagraph (A) shall not be merged therein but shall
27 commence at the time the person would otherwise have
28 been released from prison.

29 (f) (1) Notwithstanding any other law, subdivisions
30 (b) to (i), inclusive, shall be applied in every case in
31 which a defendant has a prior felony conviction as
32 defined in subdivision (d). The prosecuting attorney shall
33 plead and prove each prior felony conviction except as
34 provided in paragraph (2).

35 (2) The prosecuting attorney may move to dismiss or
36 strike a prior felony conviction allegation in the
37 furtherance of justice pursuant to Section 1385, or if there
38 is insufficient evidence to prove the prior conviction. If
39 upon the satisfaction of the court that there is insufficient

1 evidence to prove the prior felony conviction, the court
2 may dismiss or strike the allegation.

3 (g) Prior felony convictions shall not be used in plea
4 bargaining as defined in subdivision (b) of Section 1192.7.
5 The prosecution shall plead and prove all known prior
6 felony convictions and shall not enter into any agreement
7 to strike or seek the dismissal of any prior felony
8 conviction allegation except as provided in paragraph (2)
9 of subdivision (f).

10 (h) ~~AA~~—(1) *Except as provided in paragraph (2) of this*
11 *subdivision, all references to existing statutes in*
12 *subdivisions (c) to (g), inclusive, are to statutes as they*
13 *existed on June 30, 1993.*

14 (2) *A felony conviction under paragraph (3) of*
15 *subdivision (a) of Section 550 shall constitute a serious*
16 *felony for purposes of this section.*

17 (i) If any provision of subdivisions (b) to (h), inclusive,
18 or the application thereof to any person or circumstance
19 is held invalid, that invalidity shall not affect other
20 provisions or applications of those subdivisions which can
21 be given effect without the invalid provision or
22 application, and to this end the provisions of those
23 subdivisions are severable.

24 (j) The provisions of this section shall not be amended
25 by the Legislature except by statute passed in each house
26 by rollcall vote entered in the journal, two-thirds of the
27 membership concurring, or by a statute that becomes
28 effective only when approved by the electors.

29 *SEC. 2. Section 1170.12 of the Penal Code is amended*
30 *to read:*

31 1170.12. (a) Notwithstanding any other provision of
32 law, if a defendant has been convicted of a felony and it
33 has been pled and proved that the defendant has one or
34 more prior felony convictions, as defined in subdivision
35 (b), the court shall adhere to each of the following:

36 (1) There shall not be an aggregate term limitation for
37 purposes of consecutive sentencing for any subsequent
38 felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section.

(7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6) of this subdivision, the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to this section will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(b) Notwithstanding any other provision of law and for the purposes of this section, a prior conviction of a felony shall be defined as:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is

1 a prior felony conviction for purposes of this section shall
2 be made upon the date of that prior conviction and is not
3 affected by the sentence imposed unless the sentence
4 automatically, upon the initial sentencing, converts the
5 felony to a misdemeanor. None of the following
6 dispositions shall affect the determination that a prior
7 conviction is a prior felony for purposes of this section:

8 (A) The suspension of imposition of judgment or
9 sentence.

10 (B) The stay of execution of sentence.

11 (C) The commitment to the State Department of
12 Health Services as a mentally disordered sex offender
13 following a conviction of a felony.

14 (D) The commitment to the California Rehabilitation
15 Center or any other facility whose function is
16 rehabilitative diversion from the state prison.

17 (2) A conviction in another jurisdiction for an offense
18 that, if committed in California, is punishable by
19 imprisonment in the state prison. A prior conviction of a
20 particular felony shall include a conviction in another
21 jurisdiction for an offense that includes all of the elements
22 of the particular felony as defined in subdivision (c) of
23 Section 667.5 or subdivision (c) of Section 1192.7.

24 (3) A prior juvenile adjudication shall constitute a
25 prior felony conviction for purposes of sentence
26 enhancement if:

27 (A) The juvenile was sixteen years of age or older at
28 the time he or she committed the prior offense, and

29 (B) The prior offense is

30 (i) listed in subdivision (b) of Section 707 of the
31 Welfare and Institutions Code, or

32 (ii) listed in this subdivision as a felony, and

33 (C) The juvenile was found to be a fit and proper
34 subject to be dealt with under the juvenile court law, and

35 (D) The juvenile was adjudged a ward of the juvenile
36 court within the meaning of Section 602 of the Welfare
37 and Institutions Code because the person committed an
38 offense listed in subdivision (b) of Section 707 of the
39 Welfare and Institutions Code.

(c) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following shall apply where a defendant has a prior felony conviction:

(1) If a defendant has one prior felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2) (A) If a defendant has two or more prior felony convictions, as defined in paragraph (1) of subdivision (b), that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of

(i) three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior felony convictions, or

(ii) twenty-five years or

(iii) the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(d) (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has a prior felony conviction as defined in this section. The prosecuting attorney shall plead and prove each prior felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

(e) Prior felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (d).

(f) (1) Except as provided in paragraph (2) of this subdivision, all references to existing statutes are to statutes as they existed on June 30, 1993.

(2) A felony conviction under paragraph (3) of subdivision (a) of Section 550 shall constitute a serious felony for purposes of this section.

SEC. 3. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section, "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge

1 relating to any charge against the defendant or to the
2 sentencing of the defendant.

3 (c) As used in this section, “serious felony” means any
4 of the following:

5 (1) Murder or voluntary manslaughter.

6 (2) Mayhem.

7 (3) Rape.

8 (4) Sodomy by force, violence, duress, menace, threat
9 of great bodily injury, or fear of immediate and unlawful
10 bodily injury on the victim or another person.

11 (5) Oral copulation by force, violence, duress, menace,
12 threat of great bodily injury, or fear of immediate and
13 unlawful bodily injury on the victim or another person.

14 (6) Lewd or lascivious act on a child under the age of
15 14 years.

16 (7) Any felony punishable by death or imprisonment
17 in the state prison for life.

18 (8) Any other felony in which the defendant
19 personally inflicts great bodily injury on any person, other
20 than an accomplice, or any felony in which the defendant
21 personally uses a firearm.

22 (9) Attempted murder.

23 (10) Assault with intent to commit rape or robbery.

24 (11) Assault with a deadly weapon or instrument on a
25 peace officer.

26 (12) Assault by a life prisoner on a noninmate.

27 (13) Assault with a deadly weapon by an inmate.

28 (14) Arson.

29 (15) Exploding a destructive device or any explosive
30 with intent to injure.

31 (16) Exploding a destructive device or any explosive
32 causing great bodily injury or mayhem.

33 (17) Exploding a destructive device or any explosive
34 with intent to murder.

35 (18) Burglary of an inhabited dwelling house, or trailer
36 coach as defined by the Vehicle Code, or inhabited
37 portion of any other building.

38 (19) Robbery or bank robbery.

39 (20) Kidnapping.



1 (21) Holding of a hostage by a person confined in a
2 state prison.

3 (22) Attempt to commit a felony punishable by death
4 or imprisonment in the state prison for life.

5 (23) Any felony in which the defendant personally
6 used a dangerous or deadly weapon.

7 (24) Selling, furnishing, administering, giving, or
8 offering to sell, furnish, administer, or give to a minor any
9 heroin, cocaine, phencyclidine (PCP), or any
10 methamphetamine-related drug, as described in
11 paragraph (2) of subdivision (d) of Section 11055 of the
12 Health and Safety Code, or any of the precursors of
13 methamphetamines, as described in subparagraph (A) of
14 paragraph (1) of subdivision (f) of Section 11055 or
15 subdivision (a) of Section 11100 of the Health and Safety
16 Code.

17 (25) Any violation of subdivision (a) of Section 289
18 where the act is accomplished against the victim's will by
19 force, violence, duress, menace, or fear of immediate and
20 unlawful bodily injury on the victim or another person.

21 (26) Grand theft involving a firearm.

22 (27) Carjacking.

23 (28) Any attempt to commit a crime listed in this
24 subdivision other than an assault.

25 (29) Any conspiracy to commit an offense described in
26 paragraph (24) as it applies to Section 11370.4 of the
27 Health and Safety Code where the defendant conspirator
28 was substantially involved in the planning, direction, or
29 financing of the underlying offense.

30 (30) Knowingly causing or participating in a vehicular
31 collision, or any other vehicular accident for the purpose
32 of presenting any false or fraudulent claim.

33 (d) As used in this section, "bank robbery" means to
34 take or attempt to take, by force or violence, or by
35 intimidation from the person or presence of another any
36 property or money or any other thing of value belonging
37 to, or in the care, custody, control, management, or
38 possession of, any bank, credit union, or any savings and
39 loan association.

1 As used in this subdivision, the following terms have the
2 following meanings:

3 (1) “Bank” means any member bank of the Federal
4 Reserve System, and any bank, banking association, trust
5 company, savings bank, or other banking institution
6 organized or operating under the laws of the United
7 States, and any bank the deposits of which are insured by
8 the Federal Deposit Insurance Corporation.

9 (2) “Savings and loan association” means any federal
10 savings and loan association and any “insured institution”
11 as defined in Section 401 of the National Housing Act, as
12 amended, and any federal credit union as defined in
13 Section 2 of the Federal Credit Union Act.

14 (3) “Credit union” means any federal credit union and
15 any state-chartered credit union the accounts of which
16 are insured by the Administrator of the National Credit
17 Union Administration.

18 (e) The provisions of this section shall not be amended
19 by the Legislature except by statute passed in each house
20 by rollcall vote entered in the journal, two-thirds of the
21 membership concurring, or by a statute that becomes
22 effective only when approved by the electors.

23 ~~SEC. 2.—~~

24 *SEC. 4. Section 2 of Proposition 184, as approved at*
25 *the November 8, 1997, general election, is repealed.*

26 ~~Section 2. All references to existing statutes are to~~
27 ~~statutes as they existed on June 30, 1993.~~

28 *SEC. 5. No reimbursement is required by this act*
29 *pursuant to Section 6 of Article XIII B of the California*
30 *Constitution because the only costs that may be incurred*
31 *by a local agency or school district will be incurred*
32 *because this act creates a new crime or infraction,*
33 *eliminates a crime or infraction, or changes the penalty*
34 *for a crime or infraction, within the meaning of Section*
35 *17556 of the Government Code, or changes the definition*
36 *of a crime within the meaning of Section 6 of Article*
37 *XIII B of the California Constitution.*

38 Notwithstanding Section 17580 of the Government
39 Code, unless otherwise specified, the provisions of this act

1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

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